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Remarks

The present response is to the Office Action mailed in the above-referenced case on September 09, 2004, made final. Claims 7-13 are presented below for examination. The Examiner withdraws claim 12 from consideration. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP404056631A, hereinafter '631A, in view of Kinford, Jr. (4,357,045) hereinafter Kinford. Claims 9-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over '631A.

Applicant traverses the Examiner's decision to further restrict and therefore withdraw claim 12. The last response filed by applicant in the present case acknowledged an election restriction asserted by the Examiner in which claims 7-13 were elected by applicant for prosecution. Applicant also amended the specification and Figure 5 in order to overcome a 112 rejection over claim 12, asserted by the Examiner.

The present Office Action includes a further restriction asserted by the Examiner of claim 12 based on the amendment of Figure 5. The Examiner states that since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 12 is withdrawn from consideration as being directed to a non-elected invention (see 37 CFR 1.142(b) and MPEP 821.03).

Applicant argues that the amendment of figure 5 and the specification was not new matter from the originally claimed invention. Claim 12 is part of the set of claims elected by applicant for prosecution. Original claim 12 recites that, "The airfoil of claim 7 wherein the airfoil is adjustable in one or both of direction

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and/or spacing." The original specification (page 9, beginning line 20 supporting said limitation teaches that; "Fig. 5 is a section view illustrating an elevation profile of bug foil 301 of Fig. 4. Bug foil 301 is curved for airflow redirection according to a preferred embodiment of the present invention. Base foil 303 is flush against the vehicle hood at its forward position redirects air into the foil channels formed of the space between foil 303 and foil 302 set apart by support fins 304. In one embodiment of the present invention, an adjustment mechanism (not shown) may be provided to properly adjust the side profile of foil 301 to the angle of protrusion of the windshield above the hood of the vehicle. Such a mechanism could be incorporated in an embodiment where foils 302 and 303 are disposed on an axle that is rotatable and directly controlled by such as a turn knob disposed at either or both ends of the foil. In this case, windshield feet 306 would also be adjustable and a separable part of the assembly."

Applicant's amendments to Fig. 5 and the specification merely shows an adjustment mechanism which is clearly taught, but stated in the specification as "not shown". Applicant argues that the specification taught the adjustment mechanism and claim 12 positively recites the adjustment mechanism. The specification was amended to include element numbers for the disclosed items of a rotatable axle and turn knob. Figure 5 was amended to show the rotatable axle and turn knob.

The Examiner relies on MPEP 821.03 and 37 CFR 1.142(b) to support the decision to restrict claim 12. 37 CFR 1.142(b) is reproduced below:

(b) Claims to the invention or inventions not elected, if not cancelled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

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Applicant argues that claim 12 was offered for election by the examiner in Group I (7-13), and elected by applicant for prosecution. Portion of MPEP 821.03 are reproduced below:

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in 1.143 and 1.144.

Claims added by amendment following action by the examiner, MPEP 818.01, 818.02(a), to an invention other than previously claimed, should be treated as indicated by 37 CFR 1.145.

Applicant argues that claim 12 is not drawn to an invention distinct and independent from the invention previously claimed. Original claim 12 was disclosed and claimed in the invention previously claimed. The Examiner accepted the claim with a 112 restriction which was overcome by amending Fig. 5 and the specification. Claim 12 is not an added claim. Claim 12 was part of the original claims 7-13 elected for prosecution by applicant. Applicant believes the Examiner erred in further restricting claim 12 as argued above. The rule and referenced portion of MPEP simply do not support the Examiner's restriction. Therefore, applicant requests the Examiner consider claim 12 in the examination process.

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over '631A in view of Kinford. Applicant previously argued that '631A fails to disclose the limitations of claim 7, as amended, in that the upper foil is connected to and spaced apart from the base foil by a plurality of support fins creating

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separate airflow direction channels, characterized in that the channels formed between the upper and lower air foils by the plurality of support fins function to redirect airflow in a path substantially parallel to the windshield, forming a bug shield of moving air.

The Examiner relies on Kinford to read on the fins as claimed in applicant's invention. Applicant further amends the fins to be adjustable.

Applicant argues that Kinford does not teach adjustable fins, nor would it be obvious to one of ordinary skill in the art to make the fins as claimed in applicant's invention adjustable when considering Kinford. Col. 7, lines 1-11 of Kinford teaches the necessity of a stationary device, therefore it would not be obvious to make the fins adjustable.

Applicant's fins are distributed strategically along the width of foil 301, creating multiple separate airflow direction channels, which channel the air in each separate channel in slightly different angles of direction relative to one another. This is due to the fins disposed left of center being angled slightly to the left and the fins disposed to the right of center angled slightly to the right, as shown in Figs 4 and 5. The airflow through the airfoil is thereby directed in a strategic fashion so as to spread the flow evenly over the windshield.

In contrast, the apparatus taught by the reference of Kinford teaches air guide veins 50 which correspond to the air inlet and air outlet ends of the device. Kinford's device has stationary walls and fins which negate the need for adjustability.

In view of applicant's claim amendments, and argument provided herein, applicant is confident that the invention as recited in claim 7 as amended and described in the specification in enabling detail, is now clearly and unarguably patentable over the prior art presented by the Examiner. Claim 7 now specifically recites a plurality of adjustable support fins forming multiple separate airflow

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direction channels characterized in that the channels function to redirect airflow in multiple paths substantially parallel to the windshield, forming a bug shield of moving air. Claim 7 is therefore patentable over the references provided by the Examiner, and depending claim 8 is patentable on its own merits, or at least as depended from a patentable claim.

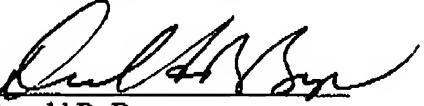
Claims 9-13 are all claims dependent from base claim 7, which is now patentable as amended over the prior art presented. Claims 9-13 are then patentable on their own merits, or at least as depended from a patentable claim.

As all of the claims standing for examination have been shown to be patentable as amended over the art of record, applicant respectfully requests reconsideration, and that the present case be passed quickly to issue. If there are any time extensions needed beyond any extension specifically requested with this amendment, such extension of time is hereby requested. If there are any fees due beyond any fees paid with this amendment, authorization is given to deduct such fees from deposit account 50-0534.

Respectfully Submitted,

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